

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-201
Table of Allotments,)	RM-10972
FM Broadcast Stations.)	RM-11103
(Shorter, Orrville, Selma and Birmingham,)	
Alabama) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 25, 2005

Released: April 27, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making*² issued at the request of SSR Communications Incorporated ("SSR Communications") proposing the allotment of Channel 300A at Shorter, Alabama, as its first local service. SSR Communications filed comments and reply comments. Scott Communications, Inc., licensee of Station WJAM-FM, Channel 300A, Orrville, Alabama and Alexander Broadcasting Company, Inc., licensee of Station WALX(FM), Channel 265C2, Selma, Alabama (collectively "Joint Parties"), filed a counterproposal. No other comments or counterproposals were received in this proceeding.

2. **Background.** The *Notice* proposed the allotment of Channel 300A at Shorter, Alabama, as its first local service with a site restriction of 13.3 kilometers (8.3 miles) south at coordinates 32-16-36 NL and 85-56-20 WL. SSR Communications filed comments reiterating its interest in Channel 300A at Shorter.

3. **Comment Summary.** In response to the *Notice*, the Joint Parties filed a counterproposal requesting the substitution of Channel 300C3 for Channel 300A at Orrville, Alabama, reallocation of Channel 300C3 from Orrville to Shorter, Alabama, as its first local service and modification of the Station WJAM-FM license accordingly. To accommodate the reallocation, the Joint Parties also proposed the reallocation of Channel 265C2 from Selma to Orrville, Alabama to prevent removal of Orrville's sole local service and modification of the Station WALX(FM) license to reflect Orrville as the community of license. The Joint Parties also proposed the substitution of Channel 299C0 for Channel 299C at Birmingham, Alabama and modification of the Station WRAX license.³

4. The Joint Parties state that their counterproposal is preferred over the *Notice's* proposal to allot Channel 300A at Shorter, Alabama under the Commission's allotment priorities⁴ because the

¹ Orrville, Selma and Birmingham, Alabama have been added to the caption. See *Public Notice*, Report No. 2677 released October 20, 2004.

² *Shorter, Alabama*, 19 FCC Rcd 9233 (MB 2004) ("Notice").

³ Citadel Broadcasting Company, licensee of Station WRAX has agreed to downgrade its station to accommodate the proposed Channel 300C3 reallocation to Shorter.

⁴ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 88, 91 (1988).

counterproposal serves a "substantially larger number of persons."⁵ In this regard, the Joint Parties note that the proposed reallocations would result in a net gain of service to 211,115 persons within the respective 60 dBu contours, while SSR Communications' proposal would only serve 86,240 persons.

5. SSR Communications filed reply comments stating that the new allotment of Channel 300A at Shorter is preferred under the Commission's allotment priority process and would be a better and more efficient use of spectrum.

6. **Discussion.** The public interest would be served by allotting at least one channel to Shorter, as its first local service. In this instance, we must determine which proposal would better serve the public interest by providing Shorter with a first local service, the allotment of Channel 300A or the reallocation of Channel 300C3. This determination is based on the policy set forth in *Revision of FM Assignment Policies and Procedures* because the proposals are mutually exclusive and no alternative channels are available to resolve the existing conflict. Generally, proposals requesting first local service are considered under priority (3), and generally community population differences are used to resolve conflicts between priority (3) proposals. This comparison cannot be used because both parties proposed a first local service to the same community. Therefore, our determination will be based on considerations normally addressed under priority (4) of the FM Allotment Priorities, "other public interest matters."

7. We must evaluate the Joint Parties' counterproposal against the *Notice's* proposal to allot Channel 300A at Shorter because of the mutually exclusivity. When comparing a "drop-in" proposal for a new allotment and a reallocation and change of community of license proposal under Section 1.420(i), we take into account the "totality of the service improvements" resulting from the proposed new and modified allotments under priority (4) of the FM Allotment Priorities.⁶ In making this comparison, the public interest would be better served by granting the *Notice's* proposal to allot Channel 300A to Shorter rather than reallocating Channel 300C3 to Shorter because it would provide an additional transmission service.⁷

8. In reaching this determination, we recognize that the proposed Channel 300C3 reallocation would provide new service to a "substantially larger number of persons" than the "drop-in" proposal. The differential in persons to be served by the counterproposal would not justify a different resolution. *Green Valley Broadcasters* is not applicable in this case because that proceeding involved mutually exclusive proposals for new transmission service. Under these circumstances, we believe that the public interest is better served by allotting Channel 300A at Shorter, Alabama and denying the Joint Parties' counterproposal.

9. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

10. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective June 13, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

⁵ Citing *In re Applications of Green Valley Broadcasters, Inc., et. al.*, 19 FCC Rcd 13341 (2004), *recon. pending* (applying the FM allotment priorities to the AM service).

⁶ See *Keeseville, New York, Hartford and White River Junction, Vermont*, 19 FCC Rcd 16106 (MB 2004).

⁷ Channel 300A can be allotted to Shorter, Alabama, in conformity with the Commission's rules, provided there is a site restriction of 13.3 kilometers (8.3 miles) south at coordinates 32-16-36 North Latitude and 85-56-20 West Longitude.

CommunitiesChannel No.

Shorter, Alabama

300A

11. The window period for filing applications for Channel 300A at Shorter will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

12. IT IS FURTHER ORDERED, That the counterproposal jointly filed by Scott Communications, Inc. and Alexander Broadcasting Company, Inc. IS DENIED.

13. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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Audio Division
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